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| 10/628,320 | 07/28/2003 | Robert A. Luehrsen | 005345.00007 | 4433 |

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| EXAMINER |
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DEVORE, PETER T

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| ART UNIT | PAPER NUMBER |
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3751

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,320

Applicant(s)

LUEHRSEN ET AL.

Examiner

Peter T. deVore

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-8 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isham in view of Runciman/Rios.

The Isham reference discloses a formulation dispenser comprising a material reservoir with a bag 22/101, a valve 102, a supply tube (tube leading from reservoir 102 to valve 102), and a dispense tube 128, and an alternate material reservoir container 22/101, but does not disclose that the material reservoir is a cylinder (instead it is a box). However, attention is directed to the Runciman and Rios references, which disclose similar material reservoirs with bags wherein the reservoirs are cylinders. It would have been obvious to one of ordinary skill in the art to substitute a cylinder as, for example, taught by the Runciman or Rios references for the box of the Isham device wherein so doing would amount to mere substitution of one functionally equivalent material reservoir with a bag for another within the same art and the selection of any of these material reservoirs with bags would work equally well in the Isham device. Regarding claim 7, the claimed method is inherently performed during the normal use of the modified Isham device.

Claims 2, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isham in view of Runciman/Rios and Lansdale.

Regarding claim 2, the Isham reference discloses a formulation dispenser comprising a plurality of material reservoirs with bags 22/101 and a supply tube 128, but does not disclose that the material reservoirs are cylinders (instead they are boxes) or that the supply tube leads from all the material reservoirs to a valve. The Isham reference also remains silent as to the details of the dispensing pump 166. However, attention is directed to the Runciman and Rios references, which disclose similar material reservoirs with bags wherein the reservoirs are cylinders. It would have been obvious to one of ordinary skill in the art to substitute cylinders as, for example, taught by the Runciman or Rios references for the boxes of the Isham device wherein so doing would amount to mere substitution of one functionally equivalent material reservoir with a bag for another within the same art and the selection of any of these material reservoirs with bags would work equally well in the Isham device. Also, attention is directed to Lansdale reference, which discloses a dispensing pump including a valve 49. It would have been obvious to use a dispensing pump with a valve as taught by Lansdale in the Isham device wherein so doing would be mere selection of one known dispensing pump of the known types of dispensing pumps within the art and the selection of any of these known dispensing pumps would work equally well in the Isham device.

Regarding claims 5 and 6, the Isham reference discloses a formulation dispenser comprising a material reservoir with a bag 22/101, a valve 102, and supply tube (tube

leading from reservoir 102 to valve 102), but does not disclose that the material reservoir is a cylinder (instead it is a box) or a dispense tube, dispense valve, and dispense cylinder with piston in the claimed configuration. The Isham reference also remains silent as to the details of the dispensing pump 166. However, attention is directed to the Runciman and Rios references, which disclose similar material reservoirs with bags wherein the reservoirs are cylinders. It would have been obvious to one of ordinary skill in the art to substitute a cylinder as, for example, taught by the Runciman or Rios reference for the box of the Isham device wherein so doing would amount to mere substitution of one functionally equivalent material reservoir with a bag for another within the same art and the selection of any of these material reservoirs with bags would work equally well in the Isham device. Also, attention is directed to Lansdale reference, which discloses a dispensing pump including a dispense tube 46, dispense valve 49, and dispense cylinder 40 with piston 41. It would have been obvious to use a dispensing pump with a dispense tube, dispense valve, and dispense cylinder as taught by Lansdale in the Isham device wherein so doing would be mere selection of one known dispensing pump of the known types of dispensing pumps within the art and the selection of any of these known dispensing pumps would work equally well in the Isham device.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bond in view of Moran.

The Bond reference discloses material bag assembly comprising a compressible material bag 11 with an opening and a bag spout 27, but does not disclose at least one

corner having a delta seal. However, the Moran reference discloses a similar bag including delta seals defined by two corners (23 and 24, see Figure 4) for improved strength of the bag. It would have been obvious to employ delta seal defined by corners on the Bond bag in view of Moran for improved strength of the bag.

Response to Arguments

Applicant's arguments filed 4/11/05 have been fully considered but they are not persuasive. Applicant argues that element 102 is not a valve because the Isham reference refers to element 102 as the location where the containers are "placed in communication" but does not explicitly call element 102 a valve. However, element 102 as shown on Figure 3 is clearly depicted as multi-way valve capable of selective placement of the containers 101 in communication with the downstream line. Applicant further argues that there is no motivation to substitute the bag in box of the Isham device for a bag in cylinder as taught by Runciman and Rios. However, it is the Examiner's position that the functional equivalence of the two configurations warrant a finding of obviousness in this case.

Applicant's arguments with respect to claim 8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd *Pd*


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

6/6/05